

Community Development Department

BISMARCK BOARD OF ADJUSTMENT MEETING AGENDA AUGUST 5, 2010

Tom Baker Meeting Room

4:00 p.m.

City-County Office Building

MINUTES

1. **Minutes.** Consider approval of the minutes of the July 1, 2010 meeting.

REQUESTS

2. **1620 COUNTRYSIDE DRIVE** (James Schmidt) Request for a variance to exceed the allowable accessory building area for the purpose of constructing a detached 30'x40' storage building at the above-mentioned property.

OTHER BUSINESS

3. **Continuing Discussion** regarding RR District setbacks.

ADJOURNMENT

4. **Adjourn.** The next regular meeting date is scheduled for September 2, 2010.

Bismarck-Burleigh County Community Development Department
221 North 5th Street • PO Box 5503 • Bismarck, ND 58506-5503 • TDD: 711 • www.bismarck.org

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
JULY 1, 2010**

The Bismarck Board of Adjustment met on July 1, 2010 at 4:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Board members present were Chair Michael Marback, Blair Ihmels, Jennifer Clark, Dean Conrad, and Jeff Ubl.

Staff members present were Ray Ziegler (Building Official), Gregg Greenquist (Planner), and Kim Riepl (Office Assistant).

Others present were Kinsey Piatz, 10410 Lilly Drive, Bismarck, ND; and John Schultz, 5350 38th Avenue, Flasher, ND.

MINUTES

Chair Marback asked for consideration of the June 3, 2010 minutes.

MOTION: A motion was made by Mr. Conrad and seconded by Mr. Ihmels to approve the minutes of the June 3, 2010 meeting as presented. With all members voting in favor, the minutes were approved.

VARIANCE – WENDLIN PIATZ – 10410 LILLY DRIVE

Chair Marback stated the applicant was requesting a variance to reduce the side yard setback from 15-feet to 9-feet for the purpose of constructing a detached garage on the property at 10410 Lilly Drive due to the location of the septic system and a steeply sloped lot. He asked Ms. Kinsey Piatz, who was representing the applicant, if there was anything to add. Ms. Piatz declined, saying everything should be in the application.

Mr. Ihmels asked Mr. Ziegler if the only issue was the setback and if the property was otherwise compliant in square footage. Mr. Ziegler confirmed that the setback was the only issue and the minimum required setback was 15-feet.

Mr. Ihmels expressed the opinion that this situation seemed to present a textbook example of a variance needed due to topographical features.

The following findings were provided:

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RR zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.

4. The requested variance is the minimum variance that will accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

MOTION: A motion was made by Mr. Ihmels to approve the request for the variance to reduce the side yard setback from 15-feet to 9-feet. Mr. Conrad seconded the motion and with all members voting in favor, the motion to approve the variance was passed.

Upon passage of the motion, Mr. Greenquist did recommend to the applicant that subdivision covenants should be checked prior to obtaining a building permit.

OTHER BUSINESS

Discussion took place regarding the usage of lot percentages to determine setback requirements. Informational packets were provided to the members of the Board of Adjustment which outlined references in the City Ordinance to the proportional percentage calculation of setbacks. Mr. Conrad asked if the packets were for informational purposes only or if the intent was to standardize the text language within the Ordinance. Mr. Greenquist noted that the practical application of using the proportional percentage to calculate setback requirements in the RR zoned districts has not been exercised for quite some time, several decades perhaps. He stated an Ordinance re-write had been ongoing for approximately the last three years and that perhaps changes recommended by the Board of Adjustment could be incorporated into that process.

Mr. Ubl commented that any changes made to the text would have far-reaching effects as the proportional percentage calculation was relevant to many of the zoning districts, and that the members of the Board should take some time to review the material provided. Ms. Clark did agree that any recommendations coming from that review should become part of the re-write process so that practices follow the Ordinance.

Ms. Clark asked Mr. Ziegler if, with new construction, variances were necessary if the lot size did not comply with the 20% (calculation for setbacks) or if that was being disregarded and the straight 15-foot was being used in all cases. Mr. Ziegler replied that in rural settings such as the ETA, the 15-foot minimum is observed as the lots are larger and it is not difficult to attain that 20% calculation for setback requirements. However, in the city limits, the 20% calculation is always used as the lots are smaller.

Mr. Ihmels agreed that the Ordinance should reflect the reality (of what is being practiced) and asked for clarification of the re-write process should the Board make recommendations. Mr. Greenquist explained that to initiate an ordinance text amendment, the Board of Adjustment would submit their recommendations to planning staff who would then draft the language to the Board's satisfaction. The draft would then be taken to the Bismarck Planning & Zoning Commission which meets once per month. The first month, the recommendations are put on their agenda as a consideration item,

with a public hearing scheduled at their following months' meeting. He said the Planning Commission has the power to change the draft, deny the draft, or recommend that it go forward to the City Commission. He emphasized that once the recommendations initially reach the planning department for development of the draft, there are still about three to four months of process that must take place.

Discussion took place regarding the different zoning districts, and Mr. Greenquist provided definitions for each as follows:

- RR-Rural Residential, with a minimum lot size requirement of 65,000 square feet or 1.94 acres.
- RR5-Rural Residential zoning district created to satisfy Apple Creek Township's desire to have lots of 5 acres or larger.
- R10-Residential, for twin homes and duplexes, allowing up to 10 units per acre.
- RM-Residential Multi-Family, which may have density designations of either RM-15, allowing up to 15 units per acre, or RM-30, allowing up to 30 units per acre.
- RT-Residential, which is kind of a hybrid between residential and light commercial as it does allow for the inclusion of offices and residential.
- HM-Medical Facility District that was created for the hospitals.
- CA-Commercial district that is considered "light" or "neighborhood" commercial, with the trigger being that nothing can be retailed that requires a truck to haul it away.
- CG-Commercial district of a more inclusive nature and has no percentage setbacks.
- MA & MB-Industrial districts.
- PUD-Planned Unit Development which is a customized mixed-use zoning district that would allow for a combination of the uses.

Chair Marback recommended that the issue of addressing setback requirements be kept as a continuing item on the Board of Adjustment's agenda. It was the consensus of the rest of the members to do so.

Chair Marback announced there had been a request by Dean Conrad, a newly appointed Board member, was interested in the other members' backgrounds. Each member, in turn, shared information on their background.

Chair Marback introduced the idea of a voting roll call. It was discussed, and conflict of interest situations were addressed, with the decision being to utilize a roll call for voting items and any member with a conflict of interest that may affect the vote shall excuse himself/herself from that vote.

Mr. Ubl questioned the effect the Burleigh County Commission's proposal (to create a planning staff within the County rather than continue to utilize City planning staff) would have on the Board of Adjustment. Mr. Greenquist explained that legislation enacted in May, 2009, created an area of joint jurisdiction which exists in the area between the 2- and 4-mile ETA. This joint jurisdiction will exist either between the City

(of Bismarck) and the County (of Burleigh) or the City and a township. One of these jurisdictions will take lead. In any square mile in which there is already a subdivision, or that is developed, the City assumes lead jurisdiction. In any square mile that has no subdivision in it, either Burleigh County or the township assumes lead.

He continued by saying that if the Board of Adjustment approves a variance where the City is lead jurisdiction, upon approval, the secondary jurisdiction is notified of the action and then has a 30-day period to agree or object to the action. If they voice an objection, it goes to arbitration to be decided.

Ms. Clark asked if failure of the secondary jurisdiction to respond is assumed to be acceptance of the action, and Mr. Greenquist confirmed that to be correct.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned to meet again on August 5, 2010.

Respectfully Submitted,

Kim Riepl
Recording Secretary

APPROVED:

Michael Marback, Chair

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

BACKGROUND:

Title:

1620 Countryside Drive –Variance to construct a larger-than-allowed accessory building (Lot 6, Block 4, Countryside Estates Fourth Subdivision)

Status:

Board of Adjustment

Date:

August 5, 2010

Owner(s):

James C. Schmidt

Reason for Request:

The applicant wishes to construct a storage building that would exceed the allowable accessory building area. The maximum accessory building area for this 1.5-acre lot is 1400 square feet. The existing accessory building is 1400 square feet. The proposed 30' x 40' building is 1200 square feet. See attached memo for additional information.

Location:

East of Bismarck and east side of 52nd Street, along the west side of Countryside Drive between 17th Avenue NE and Cherrywood Drive.

Applicable Provision(s) of Zoning Ordinance:

Section 14-04-01(10) "All allowable accessory buildings to a residence shall be limited to a maximum of fourteen hundred (1,400) square feet for each lot of 85,000 square feet or less . . . *(the subject property is 67,189 square feet)*

FINDINGS:

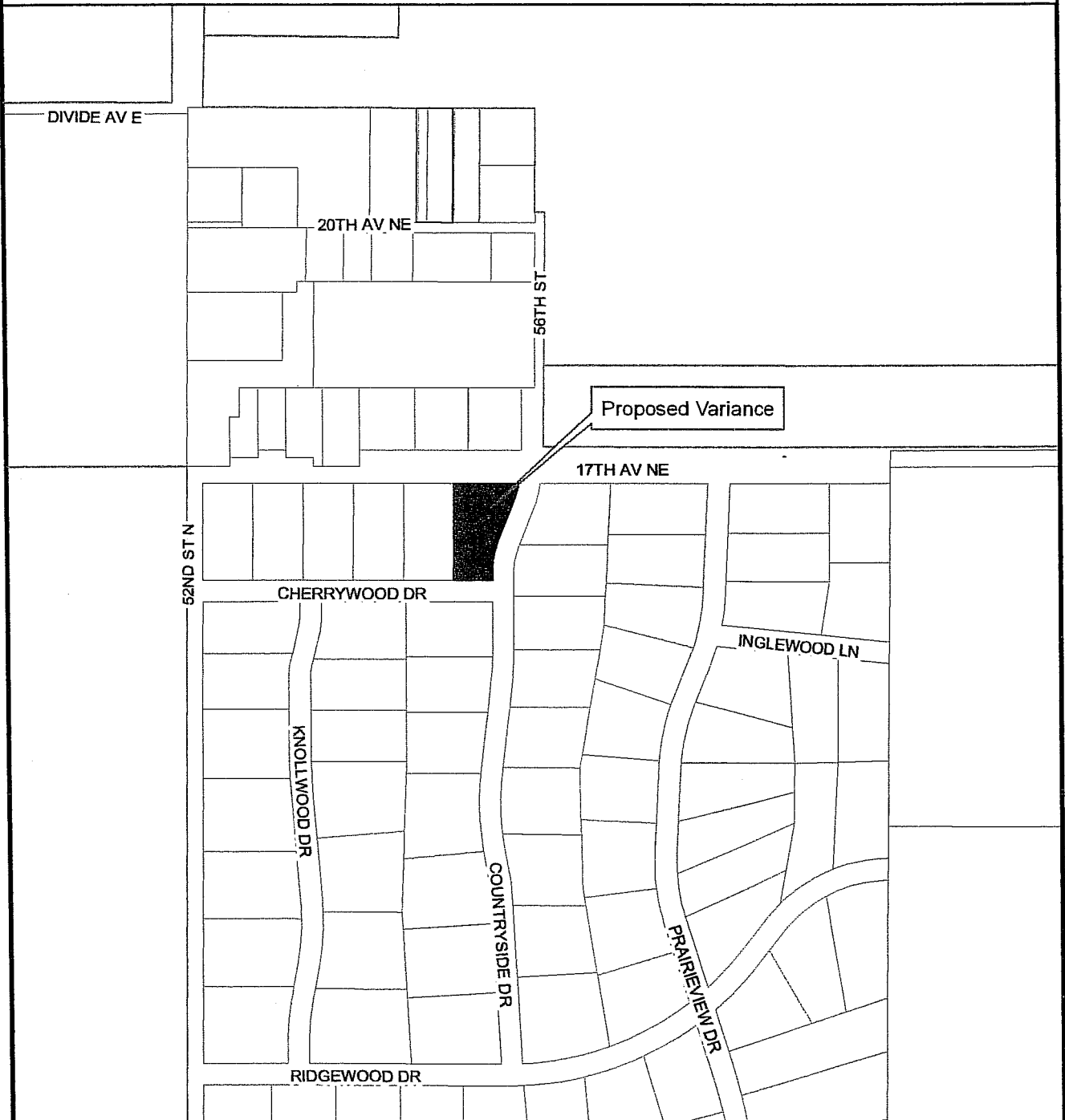
1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RR zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is the minimum variance that will accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

RECOMMENDATION:

Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board. If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.

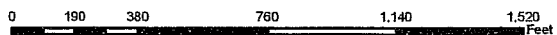
(see attached memo)

Proposed Variance
Lot 6, Block 4, Countryside Estates 4th
1620 Countryside Drive



DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.
Map was Updated/Created: July 21, 2010 (klr)

Source: City of Bismark





Community Development Department

MEMORANDUM

DATE: July 28, 2010

TO: Board of Adjustment

FROM: Gregg Greenquist

RE: Supplemental information on the variance request for Lot 6, Block 4, Countryside Estates Fourth Subdivision

On May 3, 2007, the Board of Adjustment denied a variance for this same property. That request was to build an additional 20' x 20' accessory building. The maximum accessory building area for this lot is 1400 square feet. An accessory building of 28' x 50' (1400 square feet) already exists on this lot. The documents from the previous variance request are attached.

Because attached garages can be up to 1½ times the footprint area of the living quarters of the house without counting towards the accessory building area, the applicant has now considered connecting his existing accessory building to the existing attached garage with a 28-foot walkway. By connecting the two structures, the square footage of the existing shop could be applied towards the maximum area for an attached garage.

By adding the area of the existing accessory building and the enclosed walkway to the area of the existing attached garage, the applicant would have approximately 1070 square feet available to construct a second accessory building (computation sheet attached).

But there was one problem with constructing a walkway between the two structures; it would have blocked access for a septic tank pumper truck. This is why the variance is being requested.

Mr. Schmidt asked if he could simply install the required underground concrete footings/foundation walls to connect the two structures without building the actual above-ground walkway. The answer was no. Without an enclosed walkway between the two structures, the accessory building could not be classified as part of the attached garage. The connection would have to be an enclosed, occupiable space.

Bismarck-Burleigh County Community Development Department

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COMPUTATION SHEET

Variance request for Lot 6, Block 4 of Countryside Estates 4th Subdivision
Area computations for combining the accessory building with the attached garage

If the existing accessory building was connected to the garage, it would be 329.5 square feet larger than 1½ times the footprint of the house. That overage of 329.5 square feet would then be applied towards the accessory building area making 1070.5 square feet available for a second accessory building. The applicant is requesting a second accessory building of 1200 square feet.

Footprint of living quarters of house	1519.0 sq. ft.
Times 1½	x <u>1.5</u>
Maximum attached garage area	= 2278.5 sq. ft.

Area of existing accessory building	1400.0 sq. ft.
Area of connecting walkway (approximate)	+ 144.0 sq. ft.
Area of existing attached garage (from Laura)	+ <u>1064.0</u> sq. ft.
Total area of expanded attached garage	2608.0 sq. ft.

Total area of expanded attached garage	2608.0 sq. ft.
Maximum attached garage area available	- <u>2278.5</u> sq. ft.
Overage applied to accessory building area	329.5 sq. ft.

Maximum accessory building area for 1.5-acre lot	1400.0 sq. ft.
Overage area applied to accessory building coverage	- <u>329.5</u> sq. ft.
Area available for detached accessory building	1070.5 sq. ft.

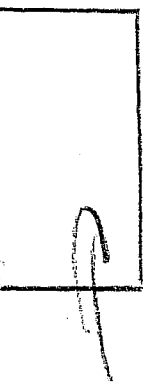
Non-access Control line

17TH AVE NE

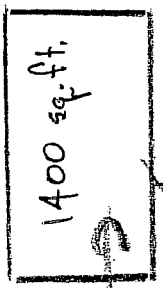
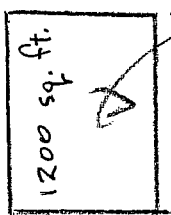
CITY LANDFILL

35' Watermain & utility easement

59' Non-access Control line



NEIGHBOR'S ACCESSORY BLDG.

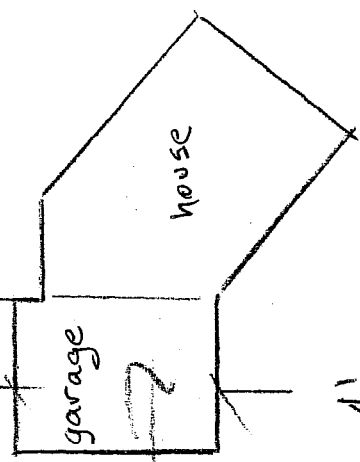


EXISTING ACCESSORY BLDG.

PROPOSED BLDG.

20' X 40'

20'



house

garage

EXISTING HOUSE

4'

COUNTRYSIDE DR.

CHEKIA/NOOD DR.

James Schmidt
1620 Countryside Dr

EXISTING CONC.
FDN. WALL & FOOTING
EXTENDING TO
FROST DEPTH

EXISTING
GARAGE

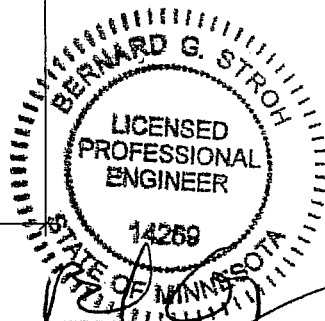
NEW 8" CONC.
FDN. WALL & FOOTING
16"X8" EXTENDING TO
FROST DEPTH

DRILL & EPOXY GROUT
(2) #4 DOWELS TO
TIE INTO EXISTING FTG.S
AT EACH END -TYP.

28'-0"

EXISTING CONC.
FDN. WALL & FOOTING
EXTENDING TO
FROST DEPTH

EXISTING
HOUSE &
GARAGE



I hereby certify that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly registered engineer under the laws of the state of Minnesota.

BAGS 8/30/08

Bernie Stroh, P.E.

Date

REG. NO. 14269

**STROH
ENGINEERING**

1128 Sibley Memorial Highway
Mendota Heights, MN 55118
Phone (651) 454-9455
Fax (651) 454-5086
strohengineers@comcast.net

PROJECT: JIM SCHMIDT RESIDENCE
LOCATION: BISMARCK, NORTH DAKOTA

PROPOSED GARAGE--HOUSE BREEZEWAY
FOUNDATION PLAN

SK1

1620 Countryside Dr

Bismarck**COPY**

CITY OF BISMARCK JUL 19 2010
BUILDING DIVISION
221 N 5TH ST
BISMARCK, ND 58506-5503
PH (701) 355-1465

CITY OF BISMARCK / ETA & BURLEIGH COUNTY

RECEIVED DATE: 07-02-2010

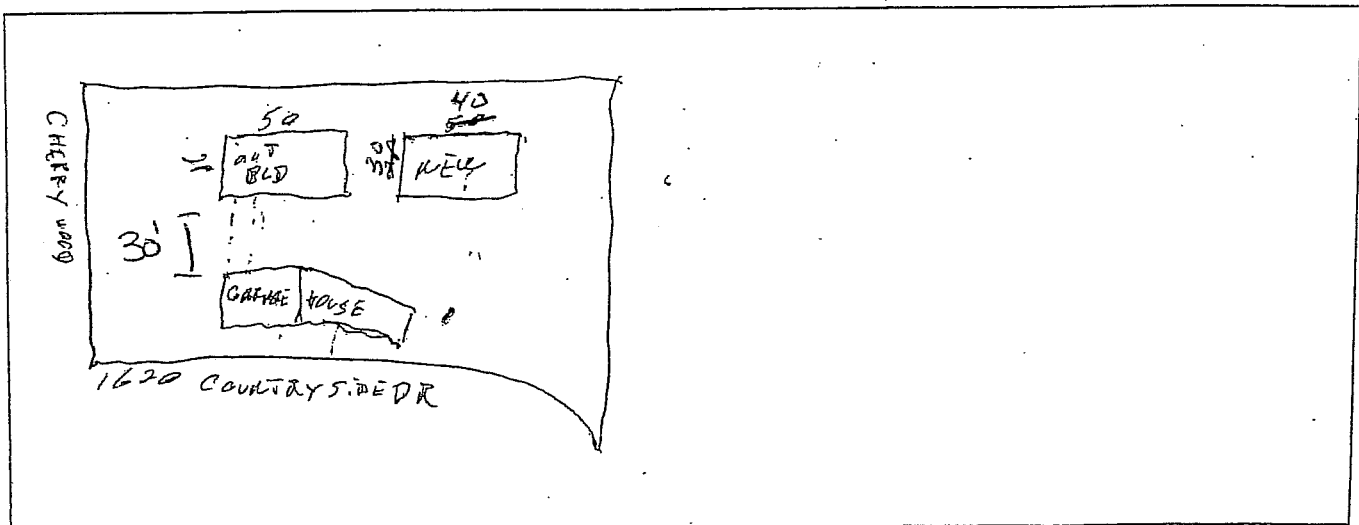
CONTACT INFORMATION:

1. Name: JAMES C SEYMOUR

2. Phone Number: _____

3. Property Address: 1620 COUNTRYSIDE DR.4. Location of Property: ☐ City of Bismarck ☒ ETA ☐ Burleigh County5 Reason for variance WANT TO BUILD NEW OUT BUILDING TO STORE EQUIPMENT.WANT TO HOOK EXISTING OUT BUILDING TO HOUSE GARAGE UNDERGROUND TO
KEEP EXCESS OPEN TO SEPTIC FOR CLEANING

6. In the space below, please draw your lot, all existing buildings located on your lot and the proposed structure. Include dimensions of buildings, distance between buildings and your property lines.



7. Your application has been reviewed. It has been:

Reviewed By:

[Signature]

☐ Approved

☒ Denied

Date:

7-6-10

8. Reason for denial:

Additional building would exceed allowable
sq. ft. for a detached structure
Can't add on to attached garage as it would block
access to septic system

Please make the corrections and resubmit the application

Please note that an application for a permit is deemed to be abandoned 180 days after the date of filing, unless the application has been pursued in good faith or a permit has been issued. Therefore, supply us with the required plans at your earliest convenience.

wants to attach existing detached to house by footings
under ground, (has engineering for footings) building no
roof/structure on these footings. Then build a ~~1400sf~~
detached bldg. 1200

RECEIVED
JUL 19 2010

CITY OF BISMARCK/ETA & BURLEIGH COUNTY
APPLICATION FOR APPROVAL OF A VARIANCE
WRITTEN STATEMENT

1. Property Address or Legal Description: 11620 Countryside Dr
2. Location of Property: ☐ City of Bismarck ☒ ETA ☐ Burleigh County
3. Type of Variance Requested: Accessory building allowance
4. Applicable Zoning Ordinance Chapter/Section: 14-04-01 #10
5. Describe how the strict application of the requirements of the Zoning Ordinance would limit the use of the property. (Only limitations due to physical or topographic features – such as an irregularly shaped, narrow, shallow or steep lot or other exceptional physical or topographic condition – that are unique characteristics and not applicable to other properties in the neighborhood are eligible for a variance. Variances cannot be granted on the basis of economic hardship or inconvenience.)
I have streets on 3 sides of my lot. Due to the topography, I am unable to build on the south side of my lot, so I would need to build to the north. I got engineering to add my existing detached garage to my house, but was advised that by doing this I would be blocking access to my drainfield.
6. Describe how these limitations would deprive you of reasonable use of the land or building involved and result in unnecessary hardship.
I would like to clean up the appearance of my property by constructing a 30x40 building for storage. Currently I have a 45-horse farm tractor with a 3 point hitch for my attachments (lawn mower, box scraper, etc) and also an enclosed trailer that are just being stored outside on my lot.
7. Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property.
An additional 1200 SF building would still leave 92% of my lot uncovered (no building). The building would barely be visible from 3 sides of my property. I will match the building so that it is visually pleasing for our country/residential area.

Previous Variance Request Materials

May 3, 2007

Lot 6, Block 4, Countryside Estates 4th

James Schmidt

Excerpt from the minutes of the May 3, 2007 Board of Adjustment meeting:

VARIANCE – James C. Schmidt – 1620 Countryside Drive

Mr. James Schmidt stated that his request is for an additional accessory building to store his equipment and keep it out of the elements. He has talked to his neighbors and they did not object and the building would not be an eyesore to the neighbors in the area.

Mr. Tvenge stated that he did not see a hardship in this request because the applicant can build on to his current garage to store equipment. Mr. Schmidt stated that it would be expensive to move the electric lines to add on this the garage.

Mr. Gary Bless stated that he lives on the opposite end of the block and does not oppose this request.

Mr. Thompson stated that the Board has turned down many requests because of the lack of hardship. If this request was granted it would set precedence for additional requests like this one.

MOTION: A motion was made by Warren Tvenge and seconded by Larry Thompson to deny the request for the variance to increase the building area for an accessory building. With all members present voting in favor of the motion.

Bismarck

Planning & Development Department

May 7, 2007

James C. Schmidt
P.O. Box 3175
Bismarck, ND 58502

RE: Variance Request – 1620 Countryside Drive
(Lot 6, Block 4, Countryside Estates 4th Subdivision)

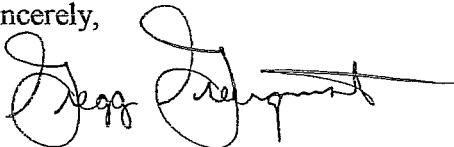
Dear Mr. Schmidt:

The purpose of this letter is to inform you that your request for a variance to increase the accessory building area from 1400 square feet to 1800 square feet at the above-referenced property was denied by the Board of Adjustment on May 3, 2007.

If you would like to appeal this decision to the Board of City Commissioners, you must do so within fifteen days of the date of this letter. Appeals should be made in writing to the Planning & Development Department.

If you have any questions or need additional information, please feel free to call our office at 701-355-1840.

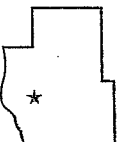
Sincerely,



Gregg Greenquist
Planner

cc: Ray Ziegler, Fire & Inspections
W.C. Wocken, City Administrator

GG/sew

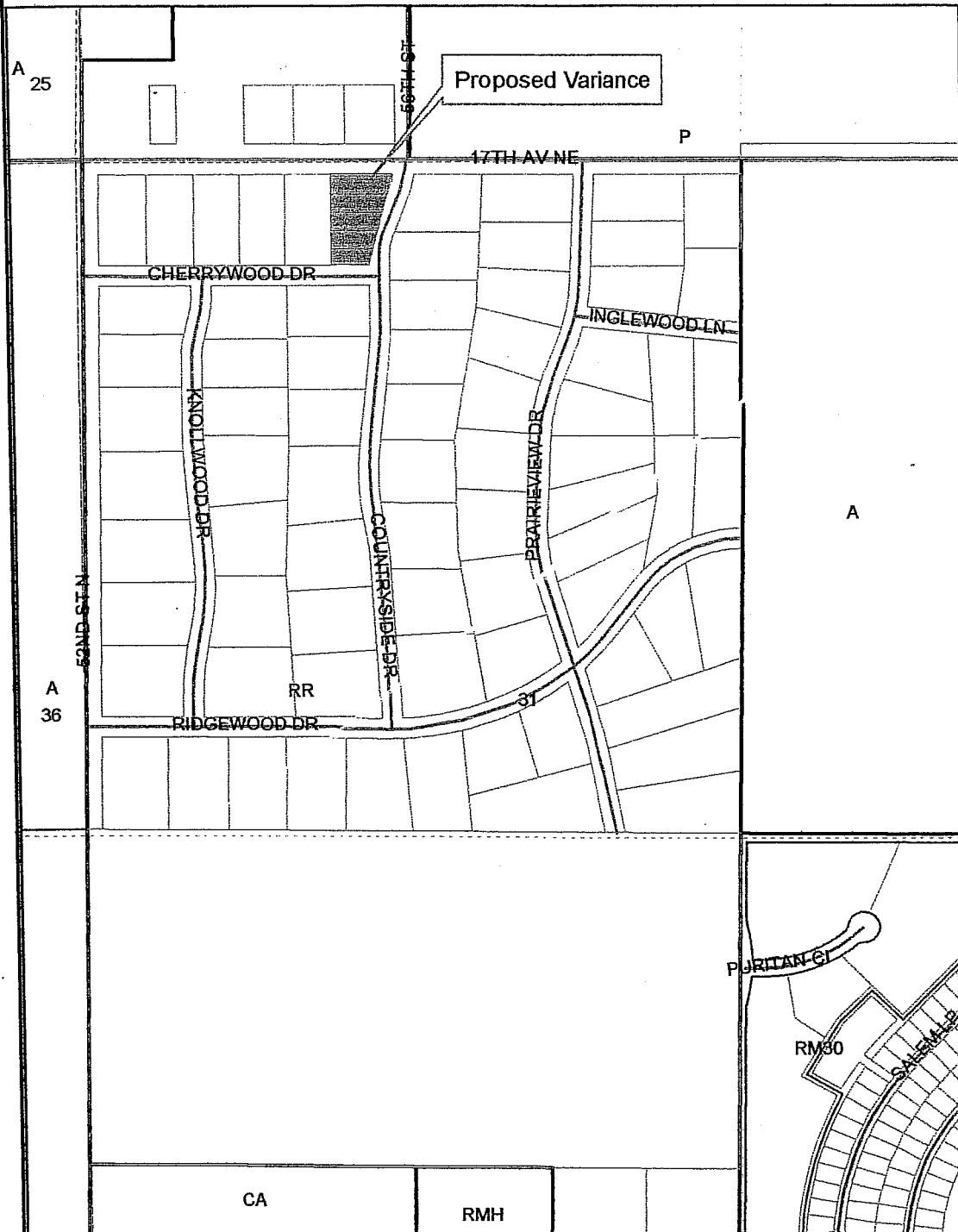


**BISMARCK-BURLEIGH COUNTY PLANNING & DEVELOPMENT
DEPARTMENT STAFF REPORT**

BACKGROUND:	
Title: 1620 Countryside Drive - Variance to construct additional accessory building (Lot 6, Block 4, Countryside Estates 4 th Subdivision)	
Status: Board of Adjustment	Date: May 3, 2007
Owner(s): James C. Schmidt	
Reason for Request: The applicant wishes to construct an additional accessory building that would exceed the area allowed by the ordinance. The proposed 20' x 20' building is 400 square feet. Accessory building maximum areas are proportional to lot size. For Mr. Schmidt's lot, the maximum accessory building area allowed is 1400 square feet. He already has an existing building that is 1400 square feet. The proposed new building would exceed the maximum area allowed by 400 square feet.	
Location: East of Bismarck and east of 52 nd Street. This is a corner lot located southwest of the intersection of 17 th Ave. and Countryside Drive.	
Applicable Provision(s) of Zoning Ordinance: Section 14-04-01(10) "All allowable accessory buildings to a residence shall be limited to a maximum of . . . fourteen hundred (1,400) square feet for each lot of 85,000 square feet or less; (<i>This lot is 67,189 square feet</i>);	
FINDINGS:	
<ol style="list-style-type: none">1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RR zoning classification.2. The hardship is not caused by the provisions of the Zoning Ordinance.3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.4. The requested variance is the minimum variance that will accomplish the relief sought by the applicant.5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.	
RECOMMENDATION:	
Staff recommends reviewing the above findings and modifying them as necessary to support the decision of the Board. If granted, the variance must be put to use within 24 months or it shall lapse and the landowner must reapply.	

Proposed Variance

Lot 6, Block 4, Countryside Estates 4th Subdivision



DISCLAIMER: This map is for representation use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated herein. Map was Updated/Created: April 28, 2007 (sew)

Source: City of Bismarck

CITY OF BISMARCK/ETA & BURLEIGH COUNTY

APPLICATION FOR APPROVAL OF A VARIANCE

WRITTEN STATEMENT

1. Property Address or Legal Description: 1620 COUNTRYSIDE DR
2. Location of Property: ☐ City of Bismarck ☒ ETA ☐ Burleigh County
3. Type of Variance Requested: Additional 400 SF accessory structure
4. Applicable Zoning Ordinance Chapter/Section: 14-03-08 Section 10
5. Describe how the strict application of the requirements of the Zoning Ordinance would limit the use of the property. (Only limitations due to physical or topographic features – such as an irregularly shaped, narrow, shallow or steep lot or other exceptional physical or topographic condition – that are unique characteristics and not applicable to other properties in the neighborhood are eligible for a variance. Variances cannot be granted on the basis of economic hardship or inconvenience.)

AS A HOBBIST I USE MY DETACHED BLDG
FOR CAR RESTORATION. I WOULD USE THE 400 SQ FT
BLDG. TO REMOVE ALL SNOW AND LAWN EQUIPMENT
FROM OUT DOORS.

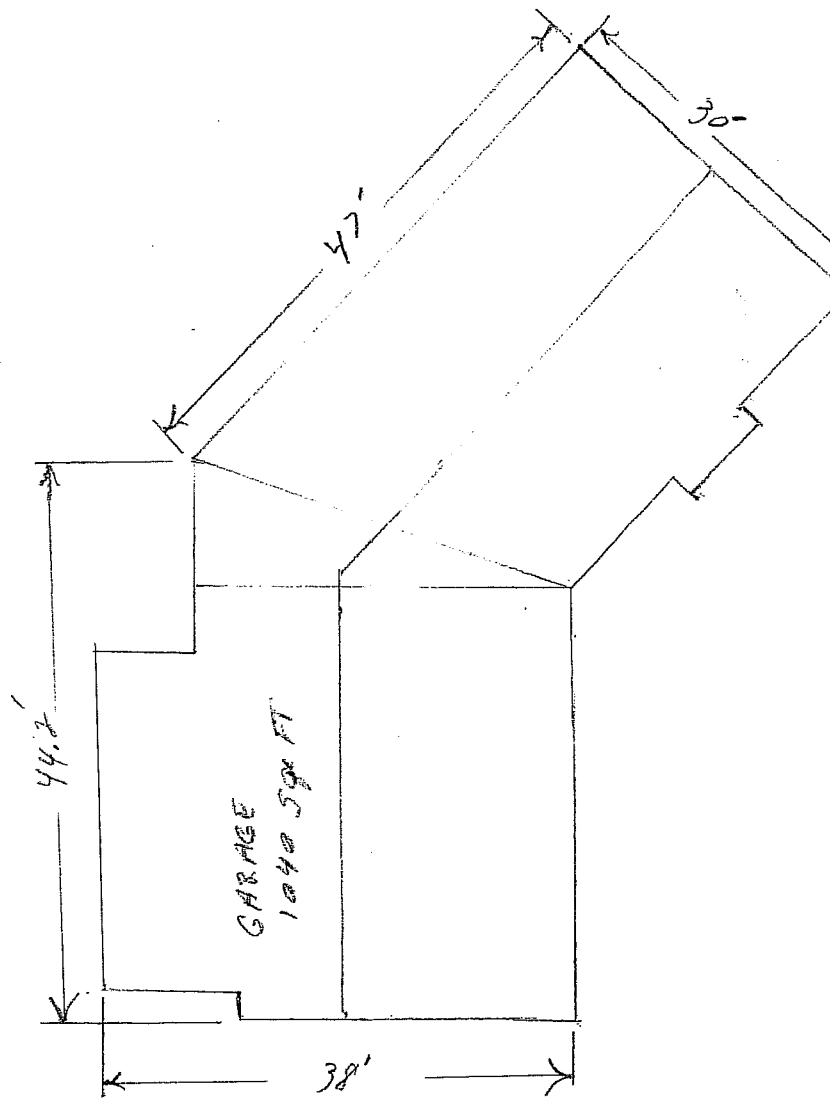
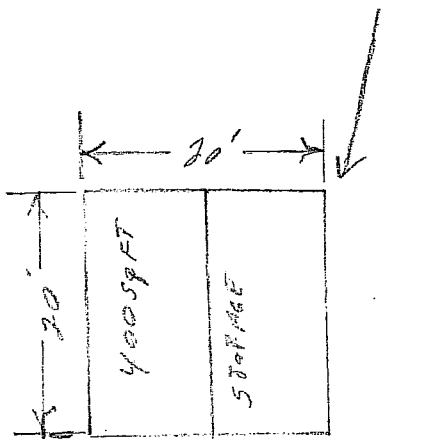
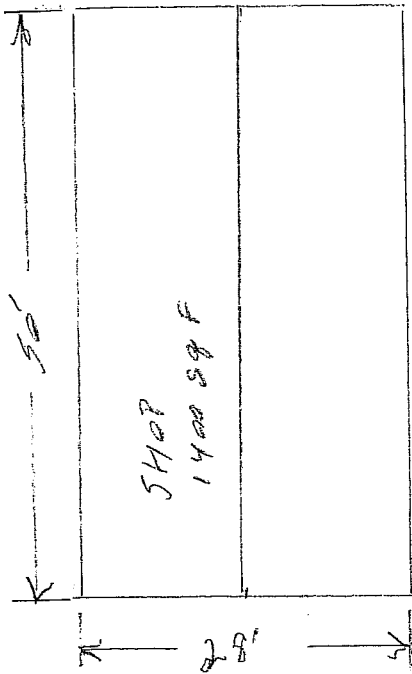
6. Describe how these limitations would deprive you of reasonable use of the land or building involved and result in unnecessary hardship.

IT WOULD BE A OPPORTUNITY TO REMOVE
EQUIPMENT FOR OUT DOORS.

7. Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property.

WOULD LIKE TO ADD 400 SQ FT BUILDING TO
STORE TRACTOR & EQUIPMENT. THE NEW BUILDING
WOULD BE BUILT TO THE NORTH OF EXISTING
SHOP, AS SHOWN IN DRAWINGS

APR 24 2004



HOUSE MAIN FLOOR 1519 SQ FT